

Federal Housing Enterprise Oversight

§ 1780.75

also represents a nonparty on a matter relevant to an issue in the proceeding, that representative must certify in writing at the time of filing the notice of appearance required by § 1780.72—

(1) That the representative has personally and fully discussed the possibility of conflicts of interest with each such party and nonparty;

(2) That each such party and nonparty waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 1780.74 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed during the course of any proceeding when any party or representative of record has acted or failed to act in a manner required by applicable statute, regulation, or order, and that act or failure to act—

(1) Constitutes contemptuous conduct. Contemptuous conduct includes dilatory, obstructionist, egregious, contumacious, unethical, or other improper conduct at any phase of any adjudicatory proceeding;

(2) Has caused some other party material and substantive injury, including, but not limited to, incurring expenses including attorney's fees or experiencing prejudicial delay;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has delayed the proceeding unduly.

(b) *Sanctions.* Sanctions that may be imposed include, but are not limited to, any one or more of the following:

(1) Issuing an order against a party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just;

(6) Assessing reasonable expenses, including attorney's fees, incurred by

any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) The presiding officer, on the motion of any party, or on his own motion, and after such notice and responses as may be directed by the presiding officer, may impose any sanction authorized by this section. The presiding officer shall submit to the Director for final ruling any sanction that would result in a final order that terminates the case on the merits or is otherwise dispositive of the case.

(2) Except as provided in paragraph (d) of this section, no sanction authorized by this section, other than refusing to accept late papers, shall be imposed without prior notice to all parties and an opportunity for any representative or party against whom sanctions would be imposed to be heard. The presiding officer shall determine and direct the appropriate notice and form for such opportunity to be heard. The opportunity to be heard may be limited to an opportunity to respond verbally immediately after the act or inaction in question is noted by the presiding officer.

(3) For purposes of interlocutory review, motions for the imposition of sanctions by any party and the imposition of sanctions shall be treated the same as motions for any other ruling by the presiding officer.

(4) Nothing in this section shall be read to preclude the presiding officer or the Director from taking any other action or imposing any other restriction or sanction authorized by any applicable statute or regulation.

(d) *Sanctions for contemptuous conduct.* If, during the course of any proceeding, a presiding officer finds any representative or any individual representing himself to have engaged in contemptuous conduct, the presiding officer may summarily suspend that individual from participating in that or any related proceeding or impose any other appropriate sanction.

§ 1780.75 Censure, suspension, disbarment and reinstatement.

(a) *Discretionary censure, suspension and disbarment.* (1) The Director may censure any individual who practices or attempts to practice before OFHEO